HARVARD LAW REVIEW

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WITH the present number the HARVARD LAW REVIEW begins its second volume. During the coming year we purpose to continue the same general policy. The leading articles will be contributed by the professors in the School and the others already indicated in the list of contributors. We hope, besides, to make a special feature of short articles, written by younger members of the profession and by students in the School, which shall deal, if possible, with subjects of current interest. The summary of work in the Law School will be the same as before. We wish to say a word about the "Recent Cases." The field is too wide for us to attempt a complete digest, however brief, of the multitude of cases decided every month. It is our aim to present only the cases, comparatively few in number, which show the progress and general tendencies of the law. All such cases will be given, and comments and references added, wherever practicable, in the hope that by making this department suggestive rather than exhaustive, we may render it of more value.

In conclusion, we realize that the REVIEW is yet only an experiment, but, prompted by the kind encouragement we have already received, we shall do our best to keep the standard as high as possible. We trust that in a few years, with the continuance of this encouragement, it will have an established place, and contribute its share in spreading the influence and work of the Harvard Law School.

THE recent Ohio Common Pleas case of *State* v. *Yates*[1] is not authority for the proposition that a dog may be the subject of larceny at common law, as it has been currently reported. The defendants were indicted for burglary, in breaking and entering a stable with intent to steal two dogs, and stealing two dogs of the value of $40. The defendants demurred to the indictment. The court overruled the demurrer on the ground that as the Ohio Larceny Act declares "anything of value may be stolen," a dog, being a "thing of value," may, under the

[1] Reported in The Albany Law Journal, vol. 37, p. 233.

statute, be stolen. Breaking and entering with intent to steal a dog is, therefore, burglary in Ohio.

The case is interesting reading, on account of the various authorities cited, including poetical citations from Byron, Pope, and Burns, and prose from Motley and the Bible.

MR. SEYMOUR D. THOMPSON contributes an interesting article to the "Central Law Journal" on the use of documents to refresh the memory of witnesses.[1] The notion contained in this practice is, that it is sufficient if the witness is "able to swear that the memorandum is correct, although he may have forgotten the facts." Therefore it is not material by whom the memorandum is made, or even that it is a copy. Mr. Thompson does not extend this principle so far as to regard the time when it was made as immaterial; on the contrary, he argues that because the memorandum must have been made at or about the time of the events to which it relates, therefore a witness should not be allowed to refer to his own previous testimony or depositions.

It seems formerly to have been thought that the witness could not use memoranda, unless he had some independent recollections which merely needed a little revivifying; but that idea has been broadened to the rule quoted above. A witness may now refer to a memorandum of events of which he has no positive recollection, provided he will swear that it is an accurate record. In that case, Mr. Thompson thinks, the document itself may be given to the jury, though he admits a difficulty in finding any settled rule on the point.

The article contains many references to authorities.

IN the January "Law Quarterly Review" Mr. Herbert Stephen discusses the recent New Zealand case of *Reg.* v. *Hall*,[2] which is chiefly valuable in the specific limitation that it sets upon the doctrine of *Reg.* v. *Geering*[3] and other later cases, that, where it is a question whether a given act was accidental or intentional, evidence is admissible that such act was one of a series of circumstances in each of which the defendant was similarly concerned.

In *Reg.* v. *Hall* the defendant was indicted for the murder by poisoning of one Cain, his wife's step-father. On the trial evidence was offered that the defendant had subsequently attempted to poison his wife, in order to show that the administration of poison to Cain was not accidental. The court held that the evidence was not admissible, because there was not sufficient prior evidence that the defendant was the person who administered the poison to Cain, and because the evidence went less to show that the administration was intentional than it did to show that Hall was the person who administered it. The court held, says Mr. Stephen, that "evidence of this class could only be admitted on account of its relevancy to the question of accident or intention, when there was evidence *aliunde* fixing the prisoner with the administration."

In other words, the court limits the doctrine of *Reg.* v. *Geering* to cases where the fact that the prisoner committed the act in question

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[1] Memoranda to Refresh Recollection of Witnesses. The Cent. L. Jour. vol. 26, no. 13, p. 311.

[2] Evidence in Criminal Cases of Similar but Unconnected Acts. The Law Quarterly Review, vol. iv. no. 13, p. 75.

[3] 18 L. J. M. C. 215.

has first been proved by other evidence; only then does the evidence of other similar acts become admissible to rebut the theory of accident.

THE decision of the United States Supreme Court in the "telephone cases," on March 19, involved a principle of patent law of far reaching importance. The court held not only that Bell was the first discoverer and inventor of the telephone, but that his patent covered the entire principle of transmitting sound by means of the vibratory or undulatory electric current, and not merely the special apparatus by which he accomplished that result. The reasoning of the court is as follows: —

Bell found out that by gradually changing the intensity of a continuous electric current, so as to make it correspond exactly with the change in the density of the air caused by sonorous vibrations, vocal and other sounds could be transmitted to a distance. This was his discovery. He then devised an apparatus for making these changes of intensity, so that speech could be actually transmitted. This was his invention. The law patented not only the invention but the discovery. The patent granted him is not limited to the mere appliance by which the discovery is made of actual value, but extends to the process or principle itself. His patent, therefore, extends to the entire art of transmitting sound by means of the changing density of a continuous electric current.

The justices who dissented from the opinion, on the ground that Drawbaugh was in fact the inventor of the telephone, did not dissent from this general principle.

WE have received from Mr. John F. Baker, of New York City, an interesting communication upon the subject of the authorship of the Statute of Frauds, from which we make the following extracts: —

"Lord Mansfield, in the important case of *Wyndham* v. *Chetwynd* (1 Burr. 418), assumed that the act was introduced into Parliament in the common way, and not upon any reference to the judges; and there expresses the belief that Lord Hale could not have drawn the statute, as it was not passed by Parliament until after his death. . . .

"The Statute of Frauds must have been prepared as early as 1673, for at the first session of that year it was introduced in Parliament; and after that it went before several committees, and was discussed at several sessions previous to its passage in the spring of 1677. Hence, the theory advanced by Lord Mansfield would hardly seem tenable or sound, nor is it certainly borne out by the facts of contemporaneous history.

"After a careful investigation of the question, I think the conclusion will not escape the mind of the student that Sir Matthew Hale was the master-spirit in formulating the statute, and that he prepared the bulk of that instrument; that Sir Leoline Jenkins, an able authority in probate law, drew the sections as to wills; that Lord Guilford took some part in preparing the statute; and that Lord Nottingham not only drew the sections in relation to trusts and devises, but was conspicuously active in piloting the bill through Parliament."

THE following classified list of the members of the Harvard Law School Association, by States and Territories, on April 1, 1888, has been kindly sent us by Mr. Winthrop W. Wade, treasurer of the Association. He also writes the gratifying statement that "since January

1, 1888, the Association has increased its membership by 120 new members, 75 joining during the month of January, and 45 during the months of February and March."

STATES AND TERRITORIES REPRESENTED.

	No. of Members.		No. of Members.		No. of Members.
Alaska	1	Louisiana	1	Pennsylvania	11
Alabama	1	Maine	13	Rhode Island	8
Arkansas	1	Maryland	8	Tennessee	2
California	11	Massachusetts	409	Texas	5
Colorado	9	Michigan	11	Vermont	2
Connecticut	6	Minnesota	11	Virginia	1
Dakota	2	Mississippi	1	Washington Territory	1
Delaware	4	Missouri	22	West Virginia	1
District of Columbia	15	Montana	2	Wisconsin	3
Georgia	2	Nebraska	1		
Illinois	18	New Hampshire	7	New Brunswick	10
Indiana	3	New Jersey	4	Nova Scotia	5
Iowa	2	New York	89	France	1
Kansas	1	North Carolina	1	United States of Colombia	1
Kentucky	6	Ohio	47		
		Oregon	1		
Total					761

STATES AND TERRITORIES UNREPRESENTED.

Arizona,	New Mexico,	Wyoming.
Florida,	South Carolina,	
Nevada,	Utah,	

THE LAW SCHOOL.

IN THE MOOT COURT.

Coram GRAY, J.

Bond v. *Selwyn.*

The acquisition by prescription of a right of way over land is not prevented by orders or threats on the part of the owner of the land against the use of the way, if such orders or threats are not complied with or yielded to.

TRESPASS QUARE CLAUSUM. The time of trespass alleged was January 11, 1887, with a *continuando*. The plaintiff and defendant owned adjoining parcels of land. The defendant in 1876 began to cross the plaintiff's land by a defined path from his own land to the highway, and continued, openly and constantly, to use the path till the date of the writ, October 20, 1887.

The plaintiff repeatedly told the defendant that he must not use the path; that the plaintiff forbade him to use it; that the defendant was a trespasser; and that he would sue the defendant for trespass in using the